

SENATE BILL NO. 379

INTRODUCED BY G. PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING CRIMINAL OFFENSES CONCERNING CERTAIN ALIENS AND PROVIDING FOR SEIZURE OF PROPERTY RELATING TO THOSE OFFENSES; PROVIDING PENALTIES; AND REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Offenses concerning certain aliens -- penalties -- presumption --

definition. (1) A person may not:

(a) transport or move an illegal alien into or within this state knowing ~~or in reckless disregard of the fact~~ that the alien entered or remains in the United States in violation of law;

(b) conceal, harbor, or shield from detection an illegal alien in any place in this state knowing ~~or in reckless disregard of the fact~~ that the alien entered or remains in the United States in violation of law; or

(c) encourage or induce an illegal alien to enter or remain in this state knowing ~~or in reckless disregard of the fact~~ that the alien entered or remains in the United States in violation of law.

(2) A person who violates subsection (1) commits, for each illegal alien, other than a minor child of the illegal alien, the following offense:

~~(a) except as otherwise provided in this subsection (2), a misdemeanor punishable as provided in 46-18-212;~~

~~(b)~~(A) if the offense is committed for the purpose of commercial advantage or private financial gain, a felony punishable as provided in 46-18-213; or

~~(c)~~(B) if in committing the offense the person causes serious bodily injury or places any person in serious jeopardy of life, a felony punishable as provided in 45-5-202(2).

(3) If the United States government has determined that an alien entered or remains in the United States in violation of law, there is a rebuttable presumption that the alien entered or remains in the United States in violation of law.

(4) As used in this section, "illegal alien" means a person who the United States government has determined is not lawfully present within the United States.

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2 **NEW SECTION. Section 2. Forfeiture in connection with offense concerning illegal alien -- things**
3 **subject to forfeiture.** (1) Except as provided in this section, property belonging to or controlled by a person
4 convicted of an offense provided for in [section 1] is subject to forfeiture as provided in this section.

5 (2) (a) Except as provided in this subsection (2), a conveyance, including an aircraft, vehicle, or vessel,
6 used or intended for use to transport for commercial advantage or private financial gain two or more illegal aliens
7 in violation of [section 1] is subject to forfeiture.

8 (b) A conveyance used by a person as a common carrier in the transaction of business as a common
9 carrier is not subject to forfeiture unless there is probable cause to conclude that the owner or other person
10 having charge and control of the conveyance is a consenting party to or privy to a violation of [section 1].

11 (c) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner
12 of that conveyance to have been committed or omitted without the owner's knowledge or consent.

13 (d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest
14 of the secured party who neither had knowledge of nor consented to an act or omission constituting a violation
15 of [section 1].

16 (3) (a) Except as provided in subsection (2) and in this subsection (3), anything of value, ~~including~~
17 EXCLUDING real property, that is furnished or used to harbor for commercial advantage or private financial gain
18 two or more illegal aliens in violation of [section 1] is subject to forfeiture.

19 (b) ~~Real property or commercial~~ COMMERCIAL fixtures or equipment are not subject to forfeiture unless
20 it appears that the owner or other person having charge and control of the ~~property~~ COMMERCIAL FIXTURES OR
21 EQUIPMENT is a consenting party to or privy to a violation of [section 1].

22 (c) A forfeiture of ~~real property or commercial~~ fixtures or equipment encumbered by a bona fide security
23 interest is subject to the interest of the secured party who neither had knowledge of nor consented to an act or
24 omission constituting a violation of [section 1].

25 (d) Anything of value is not subject to forfeiture under this subsection (3) because of any act or omission
26 established by the owner of that property to have been committed or omitted without the owner's knowledge or
27 consent.

28 (4) THIS SECTION DOES NOT APPLY TO A CHURCH, CHURCH PROPERTY, OR THE PROPERTY OF A CORPORATION
29 OR OTHER ORGANIZATION EXEMPT FROM TAXATION PURSUANT TO 26 U.S.C. 501(C)(3).

30 ~~(4)~~(5) As used in this section, "illegal alien" means a person who the United States government has

determined is not lawfully present in the United States.

NEW SECTION. Section 3. When property in connection with offense concerning illegal alien may be seized. The provisions of 44-12-103, including the seizure of a conveyance that there is probable cause to believe was used or was intended to be used in violation of [section 1], apply to the seizure of property listed in [section 2].

NEW SECTION. Section 4. Procedure for forfeiture in connection with offense concerning illegal alien. (1) The provisions of Title 44, chapter 12, part 2, apply to the forfeiture of property listed in [section 2], except that:

- (a) the presumption exception provided for in 44-12-203(1) applies to the property listed in [section 2(3)];
- (b) the exceptions provided for in 44-12-204(2) and 44-12-205(1) apply to the property listed in [section 2(3)]; and
- (c) distribution of the proceeds from a sale of forfeited property must be made in accordance with subsection (2).

(2) The department of justice shall adopt rules pursuant to the Montana Administrative Procedure Act governing the distribution of the proceeds from the sale of forfeited property. The distribution must be made in the following order:

- (a) first, to those persons provided in 44-12-206(1)(a);
- (b) then to the law enforcement agency responsible for the forfeiture; and
- (c) if the forfeiture proceeding was part of or resulted in a criminal prosecution, then to the office of the county attorney who conducted the prosecution.

NEW SECTION. Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 45, chapter 7, and the provisions of Title 45, chapter 7, apply to [section 1].

(2) [Sections 2 through 4] are intended to be codified as an integral part of Title 44, and the provisions of Title 44 apply to [sections 2 through 4].

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are severable from the invalid applications.

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